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RUEATRS/DEPT OF TREASURY WASHINGTON DC IMMEDIATE

RUEAWJL/DEPT OF JUSTICE WASHINGTON DC IMMEDIATE

RHMFIU/DEPT OF HOMELAND SECURITY WASHINGTON DC IMMEDIATE

RUEHCHI/AMCONSUL CHIANG MAI IMMEDIATE 7137

RHHMUNA/CDR USPACOM HONOLULU HI PRIORITY

RHEHNSC/NSC WASHDC PRIORITY

RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY

RUEHC/DEPT OF LABOR WASHINGTON DC

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STATE FOR EAP/MLS, EEB, DRL

STATE PASS TO USTR FOR BWEISEL, BKLEIN

COMMERCE FOR EAP/MAC/OKSA FOR JKELLY

TREASURY FOR OASIA

SINGAPORE FOR FINATT BLEIWEIS

SENSITIVE

SIPDIS

E.O. 12958:N/A

TAGS: [ECON](#) [EINV](#) [ELAB](#) [ETRD](#) [SENV](#) [PREL](#) [TH](#)

SUBJECT: ENVIRONMENTALISTS VERSUS INDUSTRIALISTS: THE MAP TA PHUT
DISPUTE WORSENS

REF: A. BANGKOK 2555 (AMBASSADOR ENGAGES WITH DEPUTY PM)

[1B.](#) BANGKOK 1909 (AMBASSADOR MEETS WITH TRANSPORT MINISTER)

[1C.](#) BANGKOK 701 (ENVIRONMENTAL ACTIVISTS AND BUSINESSES CONCERNED)

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[¶1.](#) (SBU) Summary: On September 29, a Thai administrative court issued an injunction to halt 76 new industrial projects -- valued at \$10 billion -- at the Map Ta Phut Industrial Estate in Thailand's much vaunted Eastern Seaboard Industrial Development Zone over allegations that the government failed to follow the environmental provisions of the Thai Constitution when approving the projects. However, implementing legislation for these constitutional provisions has never been finalized -- a significant legal quandary that the courts (and parliament) must now resolve. The 76 Map Ta Phut projects, including a \$1.5 billion investment project of Dow Chemical, are now frozen in legal and bureaucratic limbo. End Summary.

[¶2.](#) (SBU) Comment: Thailand is experiencing the growing pains of modern economic development. Whereas industrial growth in the past could proceed almost unfettered for anyone willing to put in the money, Thai civil society has now matured to where labor, environmental and local community organizations have found a voice and the political clout to force consideration of their interests. Abhisit's government has a tough nut to crack -- how to balance its support for environmental and other activist groups with existing commitments made to businesses and investors. As reported in reftels, several U.S. businesses, including Dow and Chevron, are worried about previously-approved multi-billion dollar investments that now may be halted. The Ambassador recently raised their concerns directly with the Deputy Prime Minister (ref A) and the Transport Minister (ref B), but our advocacy efforts are more complicated now that the case has moved into the courts. Abhisit is personally leading the government's efforts to find the least-damaging resolution to the problem, but most analysts believe the longer the case drags on, the greater the damage will be -- both to Abhisit's government and Thailand's investment and business climate. End Comment.

Industrial Projects Grind to a Halt

[¶3.](#) (SBU) On September 29, the Central Administrative Court of

Thailand issued an injunction suspending the development of 76 new industrial projects -- valued at more than \$10 billion -- at the Map Ta Phut Industrial Estate in Rayong Province, less than 150 miles from Bangkok. The injunction will remain in place until the Court has ruled on a larger suit filed by environmental activists against the government, accusing eight agencies of failure to comply with environmental provisions in the 2007 Constitution when approving the Map Ta Phut projects. While the government appealed the injunction to the Supreme Administrative Court on October 2, environmental and citizen groups continue to push for the revocation of all industrial project approvals since August 2007 when the Constitution went into effect.

¶4. (U) Article 67 of the 2007 Constitution requires that prior to the operation of any project or activity that "may seriously affect the community with respect to the quality of the environment, natural resources and health," the following must be completed: an environmental impact assessment (EIA); a health impact assessment (HIA); a public hearing for affected citizens; and an assessment from an independent environmental body consisting of private environmental organizations and educational institutions.

¶5. (SBU) The implementing regulations required under Article 67 of the Constitution have never been finalized. While existing laws contain guidelines for environmental impact assessments, no such guidance exists for the health impact assessments, public hearings, or the required assessments from the yet-to-be established independent environmental body. A working committee had been set up to draft these, but without any laws or regulations (other than the verbiage in the Constitution itself), questions have arisen from businesses over how Article 67 would affect the issuance of government licenses for industrial projects, such as those at Map Ta Phut. In short, why should their projects be halted when they have done all that they can to comply with existing regulations?

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Environmental groups, on the other hand, believe the projects should never have been given even preliminary approval.

A Complicated Case Gets More Complicated

¶6. (U) The September 29 ruling follows a March 2009 decision from the Rayong Administrative Court that declared the Map Ta Phut Industrial Estate and the surrounding area a "pollution control area" per the 1992 National Environmental Quality Act (ref C). As a pollution control area, more stringent environmental standards should be applied by the National Environment Board. The government chose not to appeal this decision and instead required that the companies submit pollution-control action plans to the National Environment Board within 120 days. The affected companies completed these plans in order to comply with the ruling and hoped that the proposed plans would satisfy the government's requirements and enable them to move forward with their new projects and expansions.

¶7. (U) However, environmental and citizen groups in Map Ta Phut filed additional lawsuits in June, accusing eight government agencies of violating the Article 67 provisions of the 2007 Constitution and calling for an injunction order to halt the continuation of the new Map Ta Phut projects, many of which are now underway. Since the National Environment Board designated Map Ta Phut as a pollution control area, the lawyers argued that Article 67 of the Constitution must apply, as these projects "may seriously affect the community with respect to the quality of the environment, natural resources and health."

¶8. (SBU) In an attempt to resolve the government's predicament and address mounting investor concerns, the Council of State decreed in August that the government could approve industrial projects that had existing environmental impact assessments -- even though these assessments were completed pursuant to laws and regulations predating the 2007 Constitution. For projects with pending assessments, the government would need to abide by the 2007 constitutional requirements and follow the (yet-to-be-drafted) regulations regarding health impacts before issuing an operation or construction permit.

¶9. (SBU) The September 29 court injunction was an unexpected development, however, that suspended the activities at the 76 projects, even if the government had already approved the environmental impact assessments. While the government awaits a decision on its appeal of the injunction, Prime Minister Abhisit hopes to push through the necessary legislation required to implement the Article 67 provisions -- something that could take many months.

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